IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 14807 of 2007(K)

PETITIONER:

ST.MARY'S RUBBER (P) LTD.,
THURUTHIPADAVU, KOOVAPALLY P.O., KANJIRAPALLY,
KOTTAYAM DIST-686 518, BEING REPRESENTED BY
SUNNY JACOB, MANAGER.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

RESPONDENTS:

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1. SECRETARY TO GOVERNMENT,
COMMERCIAL TAXES DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. ASSISTANT COMMISSIONER,
KERALA VALUE ADDED TAX, COMMERCIAL TAXES
(SPL.CIRCLE), KOTTAYAM-686 001.

3. INTELLIGENCE OFFICER,
SQUAD NO.II, COMMERCIAL TAXES,
MINI CIVIL STATION, THODUPUZHA-686 584.

4. INTELLIGENCE INSPECTOR, SQUAD NO.II,
COMMERCIAL TAXES, MINI CIVIL STATION,
THODUPUZHA-685 584.

5. STATION HOUSE OFFICER,
POLICE STATION, THODUPUZHA-685 584.

BY G.P. SRI.MOHAMMED RAFFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, JUDGE

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W.P.(C). No. 14807 of 2008

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Dated this the 1st day of March, 2013.

JUDGMENT

The petitioner is in possession of certain lands. According to the petitioner, the petitioner obtained the said property in family partition. The grievance of the petitioner in this writ petition is that by Ext.P2, the petitioner's sister was directed to surrender the land mentioned in the same which is in the possession of the petitioner, on the ground that the same is Government land. Subsequently, Ext.P4 notification was issued for auctioning the usefructs from the cultivation in the property in question. It is under the above circumstances the petitioner has filed this writ petition seeking the following reliefs:

1. To call for the records leading to Ext.P2 and P4 and to quash the same by issue a writ of mandamus or any other appropriate writ, direction or order.
2. Issue a writ of mandamus or any other appropriate writ, direction or order directing respondents 1 and 2 to consider the petitioner's application for assignment of the property on merits.
3. Direct the respondents to stop all further proceedings pursuant to Ext.P2 and P4 till a decision is taken on the application made by the petitioner after hearing the petitioner.

2. The 2nd respondent has filed a counter affidavit taking the stand that a survey has been conducted, wherein the Village Officer identified the subject property as 'thodu

puramboke' which has been encroached into. It is consequent to the same that Ext.P2 notice has been issued for eviction from properties.

3. One of the contentions raised by the petitioner is that the petitioner is in possession of the land in question and she has not been given any notice or opportunity of being heard before the proceedings have been initiated to evict the petitioner from the land in question. Normally, a person can be evicted from land in his possession, even if, according to the respondent, it is Government land, only after giving notice and giving an opportunity to the party concerned to show cause against the action to evict him from the property. Apparently, in this case, no such notice or opportunity of being heard has been given. That being so, Exts.P2 and P4 are violative of principles of natural justice as also the provisions of the Kerala Land Conservancy Act and Rules.

4. In the above circumstances, Exts.P2 and P4 are quashed. But, I make it clear that this will not stand in the way of the respondents initiating fresh proceedings after issuing a notice to the petitioner or whoever is in possession of the land in

question, giving them an opportunity to file objections against the same and passing a reasoned order considering the contentions of the petitioner and others, if any. The petitioner shall not be evicted from the property in question until after two weeks from the date of service of the order on the petitioner, to enable the petitioner to seek appropriate remedies, if the order to be passed as directed above is adverse to the petitioner.

This writ petition is disposed of as above.

sd/- S. SIRI JAGAN, JUDGE.

rv